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Brief
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JW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

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Serial No. 09/842,028

Filed: April 26, 2001

For: SPLIT GRIP CONTROL LEVER FOR HEAVY MACHINERY



Atty. Ref.: 3638-10

Group: 3682

Examiner: C. Kim

August 18, 2003

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF

In reply to the Examiner's Answer dated June 17, 2003, Appellant herein submits this
Reply Brief under 37 C.F.R. 1.193(b)(1).

The Examiner's Answer maintains its misplaced interpretation of the term "fixed," referring to a dictionary definition, but without regard to the contextual use of the term in the specification. The Examiner's Answer refers to MPEP §2111, explaining that "claims must be given their broadest reasonable interpretation." This statement, however, is yet another mischaracterization, since MPEP §2111 in fact provides that "pending claims must be given their broadest reasonable interpretation consistent with the specification" (emphasis provided). The MPEP further explains by reference to case law that "the PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever

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enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." Still further, MPEP §2111 provides that the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.

As explained previously, and as well established in U.S. patent law, an applicant is entitled to be his own lexicographer. Although the Appellant contends that the use of the term "fixed" in the claims is consistent with its ordinary meaning, to the extent necessary for an appropriate interpretation of the term, Appellant intends to be his own lexicographer at least with respect to the term "fixed" to mean "immovable" to an extent sufficient to aid the operator in effectively resisting forces caused by movement of the machine. Since at least this subject matter is lacking in the cited references, Appellant respectfully submits that the rejections are misplaced.

For the reasons discussed herein and in the Appeal Brief, Appellant submits that the application is in condition for allowance. Prompt reversal of the final rejections and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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